



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2019-0574; FRL-8814-02-R10]

Approval and Promulgation of Air Quality Implementation Plans; Washington; Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Washington State Implementation Plan (SIP) pertaining to adoption by reference of a Low Emission Vehicle (LEV) program by the State of Washington. The Clean Air Act (CAA) grants authority to the EPA to adopt Federal standards relating to the control of emissions from new motor vehicles, and generally preempts states from doing so. However, the CAA provides California the ability to adopt and enforce its own new motor vehicle emission standards, as long as the EPA approves California's standards via a preemption waiver. The CAA also allows other states to adopt California's new motor vehicle emission standards for which the EPA has granted such a waiver providing other relevant criteria are met. Washington adopted California's LEV emission standards in 2005, effective with new vehicles sold in model year 2009. Washington subsequently amended its new motor vehicle emissions program to incorporate California's LEV updates to its program. The purpose of this SIP revision is to implement programs to reduce vehicle emissions that contribute to formation of ground level ozone and fine particulate matter. Washington did not submit provisions related to greenhouse gas emissions from new motor vehicles or zero-emission vehicles requirements for inclusion in the SIP. The EPA is approving and incorporating by reference Washington's LEV SIP revision, as it relates to criteria pollutants, in accordance with the requirements of the CAA.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2019-0574. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov>, or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue – Suite 155, Seattle, WA 98101, at (206) 553-0256, or hunt.jeff@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever “we,” “us,” or “our” is used, it means the EPA.

I. Background

On August 18, 2021, we proposed to approve and incorporate by reference the provisions of Washington Administrative Code, Chapter 173-423 Low Emission Vehicles submitted by the Department of Ecology (86 FR 46169). The reasons for our proposed approval were stated in the proposed rulemaking and will not be re-stated here. The public comment period for our proposed approval ended on September 17, 2021, and we received one comment in support of the proposed approval. Therefore, we are finalizing our action as proposed.

II. Final Action

The EPA is approving, and incorporating by reference into the Washington SIP, the following provisions of Washington Administrative Code (WAC), Chapter 173-423 Low Emission Vehicles submitted by the Department of Ecology:

- WAC 173-423-010, state effective December 29, 2012;
- WAC 173-423-020, state effective December 31, 2005;

- WAC 173-423-025, state effective December 31, 2005;
- WAC 173-423-030, state effective December 31, 2005;
- WAC 173-423-040, except 173-423-040(3), state effective December 29, 2012;
- WAC 173-423-050, except 173-423-050(2)(g), state effective December 29, 2012;
- WAC 173-423-060, state effective December 29, 2012;
- WAC 173-423-070, except the incorporation by reference of California code sections 1961.1 and 1961.3, state effective January 27, 2019;
- WAC 173-423-080, state effective December 29, 2012;
- WAC 173-423-100, state effective December 29, 2012;
- WAC 173-423-110, state effective December 29, 2012;
- WAC 173-423-120, state effective December 29, 2012;
- WAC 173-423-130, state effective December 31, 2005;
- WAC 173-423-140, state effective December 31, 2005; and
- WAC 173-423-150, state effective December 31, 2005.

III. Incorporation by Reference

In this document, the EPA is finalizing regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the regulations described in section II of this preamble. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of the EPA's approval,

and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.¹

IV. Statutory and Executive Order Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

¹ 62 FR 27968 (May 22, 1997).

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989*, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated July 15, 2019.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60

days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 29, 2021.

Michelle L. Pirzadeh,
Acting Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart WW—Washington

2. In § 52.2470 (c), Table 1 is amended by adding the heading Washington Administrative Code, Chapter 173-423 - Low Emission Vehicles” immediately after the entry for “173-415-070” titled and adding entries for “173-423-010”, “173-423-020”, “173-423-025”, “173-423-030”, “173-423-040”, “173-423-050”, “173-423-060”, “173-423-070”, “173-423-080”, “173-423-100”, “173-423-110”, “173-423-120”, “173-423-130”, “173-423-140”, and “173-423-150” under the newly added heading to read as follows:

§ 52.2470 Identification of plan.

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(c) * * *

TABLE 1—REGULATIONS APPROVED STATEWIDE

[Not applicable in Indian reservations (excluding non-trust land within the exterior boundaries of the Puyallup Indian Reservation) and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction]

State citation	Title/subject	State effective date	EPA approval date	Explanations
* * * * *				
Washington Administrative Code, Chapter 173-423 - Low Emission Vehicles				
173-423-010	Purpose	12/29/12	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	

173-423-020	Applicability	12/31/05	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
173-423-025	Effective Date	12/31/05	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
173-423-030	Incorporation by Reference	12/31/05	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
173-423-040	Definitions and Abbreviations	12/29/12	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Except 173-423-040(3).
173-423-050	Requirement to Meet California Vehicle Emission Standards	12/29/12	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Except 173-423-050(2)(g).

173-423-060	Exemptions	12/29/12	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
173-423-070	Emission Standards, Warranty, Recall and Other California Provisions Adopted by Reference	1/27/19	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	Except the incorporation by reference of California code sections 1961.1 and 1961.3.
173-423-080	Fleet Average Nonmethane Organic Gas (NMOG) and NMOG Plus NO _x Exhaust Emission Requirements, Reporting and Compliance.	12/29/12	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
173-423-100	Manufacturer Delivery Reporting Requirements	12/29/12	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
173-423-110	Warranty Requirements	12/29/12	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	

173-423-120	Recalls	12/29/12	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
173-423-130	Surveillance	12/31/05	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
173-423-140	Enforcement	12/31/05	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
173-423-150	Severability	12/31/05	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
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[FR Doc. 2021-24158 Filed: 11/5/2021 8:45 am; Publication Date: 11/8/2021]